

APPENDIX A: GLOSSARY

ACCELERATION. Ordered or voluntary expedited performance.

ACCEPTANCE. An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.

ACCORD and SATISFACTION. An agreement to substitute for an existing debt some alternative form of discharging debt. The new agreement is the accord; the discharge of the debt is the satisfaction.

ACT OF GOD. An event or happening resulting from natural causes without interference or aid from man.

ADMINISTRATIVE REMEDY. Non-judicial remedy provided by an agency, board, commission, or the like.

AGENT. One who is authorized to act for or in place of another.

ALLOCABLE COST. A cost that is assignable or chargeable to one or more cost objectives in accordance with the relative benefits received or other equitable relationship.

ALLOWABLE COST. Any cost that can be included in prices, cost reimbursements, or settlements under the contract to which it is allocable.

ARBITRATION. Reference of a dispute to impartial, third person(s) chosen by the parties to the dispute who agree in advance to abide by the arbitrator's decision after a hearing at which both parties have an opportunity to be heard.

AUDIT. The examination of records and documents and the securing of other evidence by confirmation, physical inspection, or otherwise, for one or more of the following purposes: determining the propriety or legality of transactions; ascertaining whether all transactions have been recorded and are reflected accurately in accounts; determining the existence of recorded assets and inclusiveness of recorded liability; determining the accuracy of financial statements or reports and the fairness of the facts they present; determining the degree of compliance with established policies and procedures relative to financial transactions and business management; or appraising an accounting system and making recommendations concerning it.

BID BOND. A surety bond that indemnifies the Agency against a winning bidder's failure to execute the contract documents and proceed with performance.

BILATERAL CONTRACT. A contract in which both contracting parties are bound to fulfill obligations reciprocally towards each other.

BRAND NAME OR EQUAL. Type of purchase description identifying one or more commercial products by brand name that sets forth those physical, functional, or other characteristics of the named product that are essential to the agency's needs.

BREACH OF CONTRACT. Failure, without legal cause, to perform any promise under a contract.

BURDEN. Fringe benefits paid to workers.

CARDINAL CHANGE. Contract change having the effect of making the work as performed not essentially the same work as the parties bargained for when the contract was awarded, and thus constituting a breach of contract by the agency.

CHANGE. A revision to the contractor's original contract requirements.

CHANGE ORDER. A written order signed by the owner, directing the contractor to make changes that the Changes clause of the contract authorizes the owner to make without the consent of the contractor.

CLAIM. A written demand or written assertion by one of the contracting parties, seeking (as a matter of right) the payment of money, the adjustment of interpretation of contract terms, or other relief.

COMPENSABLE DELAY. Delays that are excusable are the responsibility of the owner, and are compensable under the contract.

COMPENSATORY DAMAGES. Damages sufficient in amount to indemnify the injured party for the loss suffered.

CONCURRENT DELAYS. Multiple, critical delays that occur simultaneously.

CONDITION PRECEDENT. Condition that must occur or be performed before a contract becomes effective.

CONSEQUENTIAL DAMAGES. Losses that do not flow directly and immediately from an injurious act, but result indirectly from the act.

CONSIDERATION. The cause, motive, price, or impelling influence that induces a party to enter into a contract.

CONSTRUCTIVE ACCELERATION. A requirement based on the reasonable interpretation of the words, acts, or inaction of authorized agency employees, that the contractor complete the work at a date earlier than one that would reflect the time extensions to which the contractor is entitled because of excusable delays.

CONSTRUCTIVE CHANGE. A change to a contract resulting from conduct by the agency (e.g. defective specifications) or its authorized employees, that has the effect of requiring the contractor to perform additional work or otherwise modifies the contract.

CONTRACT. A term used to describe a variety of agreements or orders for the procurement of supplies or services. An agreement, enforceable by law, between two or more competent parties to do or refrain from doing something not prohibited by law for a legal consideration.

CONTRIBUTION. Sharing of a loss or payment among several defendants.

COORDINATION CLAUSE. Clause that defines the hierarchy of the contract documents (Order of Precedence Clause).

CRITICAL DELAY. Delay to the activities on the critical path.

CRITICAL PATH. The continuous chain of activities within a project that require the longest time to complete.

CROSS CLAIM. Claims litigated by parties on the same side of the main litigation, i.e. defendant files claim against other defendant.

COUNTERCLAIM. Claim presented by a defendant against a plaintiff.

DEBARMENT. A formal sanction by an agency prohibiting a contractor from receiving contracts as a result of certain proscribed actions, including crimes, fraud, etc.

DEDUCTIVE CHANGE. A change resulting in a reduction in the contract price because of a net reduction in the contractor's work.

DEFAULT. The omission or failure to perform a contractual duty.

DELAY. Postponement of the contract completion date, intermediate milestones, or start date of individual items of work, or the extended duration of an individual item of work.

DESIGN SPECIFICATION. Category of specification that sets out in detail the materials used for contract work and the mode and manner in which the contract work is to be performed.

DIFFERING SITE CONDITIONS. Unanticipated physical conditions at the site that differ materially from those set forth in the contract or ordinarily encountered.

DIRECTED CHANGE. An order to the contractor adding or deleting work to the contract, or modifying the manner or method of work performance.

DISCOVERY. Pretrial or pre-hearing procedure designed to promote full disclosure of all relevant facts related to a contract dispute.

DUTY. Legal obligation to perform under a contract.

EQUITABLE ADJUSTMENT. The doctrine that in settling a federal contract dispute, the contracting officer should make a fair adjustment or modification of the contract price.

ESTOPPEL. One who has by his or her conduct induced another to act in a particular manner is precluded (estopped) from thereafter adopting an inconsistent position and thus causing injury to such other person.

EXCULPATORY CLAUSES. A contractual provision relieving a party from any liability resulting from a negligent or wrongful act.

EXCUSABLE DELAY. Type of delay in contract performance that, in the absence of contractor control, fault, or negligence, will excuse delay and prevent a termination for default.

EXPRESS CONTRACT. Actual agreement of the parties, the terms of which are declared at the time of making, being stated in distinct and explicit language.

FLOAT. The amount of time, typically expressed in days, the start or finish of an activity can be delayed without causing a delay to the project schedule.

FREE FLOAT. The amount of time, typically expressed in days, the start or finish of an activity can be delayed without causing a delay to a successor activity.

IMPLIED CONTRACT. Contract not created by explicit agreement between the parties, but inferred by law from their acts or conduct.

IMPLIED WARRANTY. Promise arising by operation of law that something sold shall be merchantable and fit for the purpose for which a seller has reason to know it is required.

INCIDENTAL DAMAGES. Damages that include any commercially reasonable damages incurred in transportation, inspection, receipt, care, etc.

INDEMNIFICATION CLAUSE. A contractual provision in which one party agrees to answer for any liability or harm the other might incur.

INEFFICIENCY. Results when more resources are used to accomplish the same amount of work, or less work is performed with no change in resources.

INJUNCTION. A writ issued by a court of equity ordering a person to refrain from a given course of action.

INTEREST EXPENSE. The cost of borrowing funds.

INVITATION FOR BIDS. A package containing all of the information required by a bidder to submit a responsive bid when the sealed bidding method of procurement is used.

JURISDICTION. The authority of a board of contract appeals, federal court, arbitrator, or other judicial body to hold a hearing, grant relief, and make determinations that are binding on the parties.

LATENT. Hidden.

LIQUIDATED DAMAGES. A specific sum of money that has been expressly stipulated by the parties to a contract as the amount of damages to be recovered by either party in the event of a breach.

LITIGATION. A lawsuit.

MANDAMUS. A court writ issued to compel the performance of a public or official duty owned by the person to whom the order is directed.

MATERIAL. Significant.

MECHANICS LIEN. A claim created by law for the purposes of securing payment for work performed or materials furnished.

MEETING OF THE MINDS. A mutual agreement and assent by parties to the substance and terms of a contract.

MITIGATION OF DAMAGES. Duty of an injured party to minimize damages after injury.

MUTUAL AGREEMENT. Meeting of the minds with respect to the substance of an agreement.

MUTUAL MISTAKE OF FACT. Agreement in written form that does not really express what was intended by the parties.

NON-COMPENSABLE DELAY. Delay for which the contractor is not allowed to receive cost recovery.

NON-CRITICAL DELAY. Delay that affects non-critical work; typically activities with float.

NON-EXCUSABLE DELAY. Delay for which the contractor is entitled to a time extension.

NOTICE. Written warning, presented formally, intended to appraise a person of some proceeding in which his or her interests are involved.

NOTICE TO PROCEED. A written order by the agency to the contractor to proceed with the contract work.

OFFER. Manifestation of willingness to enter into a contract.

ORDER OF PRECEDENCE CLAUSE. Clause that defines the hierarchy of the contract documents (Coordination Clause).

PAROL EVIDENCE. Oral evidence; for example, under the parol evidence rule, for parties who put their agreements in writing, all previous and contemporaneous oral agreements are said to “merge” into the contract and generally are not admissible as evidence to alter terms of a contract.

PATENT. Obvious.

PAYMENT BOND. A bond required of contractors that secures their obligation to pay their laborers and suppliers.

PERFORMANCE. Fulfillment or accomplishment of a promise, contract, or other obligation according to its terms.

PERFORMANCE BOND. A bond required primarily of contractors that secures their obligation to properly complete their work.

PERFORMANCE SPECIFICATION. Category of specification that sets forth an end result; leaving manner, method of performance, and materials to the contractor’s choice.

PRIMACY OF DELAY. The delay determined to be the primary or controlling delay when evaluating whether an adjustment to contract time is appropriate as a result of concurrent delays.

PRIVILEGE. That which releases one from the performance of a duty or obligation, or exempts one from liability, that he or she would otherwise be required to perform.

PRIVITY OF CONTRACT. Requirement that party seeking to enforce contractual rights against a party must have a direct contractual relationship with that party.

PRODUCTIVITY. The ratio of work performed to resources expended.

PROPOSAL. Any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement, or for securing payments thereunder.

PROTEST. A complaint that a certain procurement action violates the applicable rule.

PROXIMATE CAUSE. Act or omission immediately causing or failing to prevent injury.

PROMISSORY ESTOPPEL. Promise that promisor should reasonably expect to induce action or forbearance on the part of the promisee.

REASONABLE COST. Generally, cost that in nature and amount does not exceed what would be incurred by an ordinarily prudent person in the conduct of competitive business.

REFORMATION. The correction of defects so as to conform to the actual intent of the parties, which intent had been, through inadvertence or otherwise, improperly expressed in the agreement as originally drawn.

REMEDY. The rights given to a party by law or by contract that the party may exercise upon default by the other contracting party.

REQUEST FOR PROPOSALS (RFP). Packet of information used in the competitive negotiation method of procurement to communicate agency requirements and solicit proposals.

RESCISSION. The unmaking of a contract; it may be effected by mutual agreement of parties or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground exists.

RESPONSIBILITY. The ability of a bidder to properly perform contract work.

RESPONSIVENESS. The compliance of a bid in all material respects with the invitation for bids.

SEALED BIDDING. One of the two basic methods of procurement, this method involves the solicitation of bids and the award of a contract to the responsible bidder submitting the lowest bid.

SETTLEMENT. An agreement ending a dispute or lawsuit.

SOVEREIGN IMMUNITY. Prevents litigants from asserting a course of action against a state or the federal government unless the government body consents.

SPEARIN DOCTRINE. Owner's legal obligation regarding the completeness of the plans and specifications as well as the implied warranty that the project is constructible as designed.

SPECIAL DAMAGES. Actual damages, but not necessarily the result of the injury, by reason of special circumstances or conditions.

SPECIFICATIONS. A particular or detailed account or listing of the various elements, materials, and dimensions in a construction contract.

STATUTE OF LIMITATIONS. Time limit within which one may bring a lawsuit.

SUBSTANTIAL PERFORMANCE. Doctrine that prohibits termination of a contract for default if a contractor's performance deviates only in minor respects from the contract's requirements.

SUPERIOR KNOWLEDGE. Knowledge greater than that had by another person, especially so as to adversely affect that person.

SUPPLEMENTAL AGREEMENT. A change to an existing contract that is accomplished by the mutual action of the parties.

SUSPENSION OF WORK. An action by the agency in which the contractor is ordered to stop work until it receives an order to continue.

TERMINATION FOR CONVENIENCE. Right of the agency, under standard Termination for Convenience of the Government clause, to bring an end to contracts that are made obsolete by technological and other developments, or that are otherwise no longer advantageous to it.

TERMINATION FOR DEFAULT. Sanction that the agency may impose, under the standard default clause, for a contractor's unexcused failure to perform.

TOTAL FLOAT. The amount of time, typically expressed in days, an activity can be delayed without causing a delay to the project completion date.

TWO-STEP SEALED BIDDING. Hybrid procurement method whereby under "step one" contractors submit technical proposals (without prices) in response to a performance specification and, then, under "step two," each contractor whose technical proposal was acceptable submits a sealed bid in accordance with normal bidding procedures.

UNILATERAL CHANGE ORDER. A written order signed by the owner, directing the contractor to make changes that the changes clause of the contract authorizes the owner to make without the consent of the contractor.

WAIVER. The voluntary relinquishment or abandonment — express or implied— of a legal right or advantage.

Reference:

Black's Law Dictionary, Second Pocket Edition, Bryan A. Garner, Editor in Chief, West Group, A Thomson Company, St. Paul, Minnesota, 2001